Supreme Court, U.S.
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No. 07-

In the
SUPREME COURT OF THE UNITED STATES

JACQUELINE M. KING,

Petitioner,

v.

STATES RESOURCES CORPORATION,
CYNTHIA NIKLAS, ESQUIRE,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

Jacqueline M. King, *Pro se,*
PO Box 91608
Washington, DC 20090-1609
(202)203-0047

QUESTIONS PRESENTED

I. Does the recording of a lis pendens among the land records, pursuant to DC Code § 42-1207 et. seq. prior to the sale of estate property belonging to a debtor in a bankruptcy overcome the presumption that such sale to a good faith purchaser during the pendency of an appeal deprives the appellate court of its ability to fashion any remedy to the former owner/appellant?

II. Does the reliance of the U.S. Bankruptcy Court upon the previous bankruptcy filings of a debtor's co-owner of real property constitute sufficient grounds to dismiss the debtor's bankruptcy petition under a finding of bad faith against the debtor?

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PARTIES TO THE PROCEEDING

The names of the parties to this proceeding are Jacqueline M. King, petitioner, (hereinafter called "King"). Respondent, States Resources Corporation (hereinafter called "States Resources") and Respondent Cynthia Niklas, Esquire, the Chapter 13 Bankruptcy Trustee for the District of Columbia. King is the Debtor/Appellant herein who filed a Chapter 13 bankruptcy Petition in the U.S. Bankruptcy Court for the District of Columbia and who owned real property located at 6129 Kansas Avenue NE along with a co-owner Luther L. Perkins. States Resources is the mortgagee who directed its Substitute Trustees to foreclose on the subject property while the bankruptcy Petition was in effect. The Substitute Trustees who foreclosed on the property are Jeremy Friedberg, Esquire and Leitess & Leitess and Friedberg, PC.

JURISDICTIONAL STATEMENT

On November 17, 2003, Petitioner King noted an appeal timely to the United States District Court of the District of Columbia from the Order of the US Bankruptcy Court entered on November 2003 dismissing King's Chapter 13 Bankruptcy Petition with prejudice. The U.S. District Court consolidated this case with a previous appeal filed on June 20, 2003 wherein the notice of appeal was transmitted to the U.S. District Court on

January 4, 2004 from the Order of the U.S. Bankruptcy Court lifting the stay imposed under 11 U.S.C. §362(a) and permitting a foreclosure on Debtor's property to stand. On March 18, 2004, the U.S. District Court entered an Order afirming the U.S. Bankruptcy Court's Orders.

King noted an appeal timely to the United States District Court for the DC Circuit and on April 4, 2007 the U.S. Court entered a Judgment and Memorandum dismissing the appeal as moot in light of the sale of King's property to a good faith purchaser during the pending of the appeal and affirming the Bankruptcy Court's finding of bad faith as grounds to dismiss the bankruptcy Petition.

King filed a Petition for Rehearing or Rehearing *En Banc* in the U.S. Court of Appeals for the DC Circuit seeking reconsideration of that Court's Judgment and Memorandum Opinion. On June 20, 2007, the U.S. Court of Appeals for the DC Circuit denied the Petition for Rehearing or Rehearing *En Banc*.

Jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. §1254 (1). Jurisdiction is also invoked under the Fifth Amendment to the United States Constitution and Article III, Section 2 of the United States Constitution.

STATEMENT OF THE CASE

This case involves a first time debtor who received an interest in real property just prior to a foreclosure sale to carry out a business venture with the co-owner and immediately filed a Chapter 13 Bankruptcy Petition in the U. S. Bankruptcy Court for the District of Columbia for *inter alia* protection from foreclosure on that property and to re-organize her other debts. The co-owner, Luther Perkins originally borrowed money from First Union National Bank of Washington, DC and executed a promissory note secured by a deed of trust on the subject real property located at 6129 Kansas Avenue, NE, Washington, DC. (hereinafter called "the property"). First Union later assigned its rights to States Resources around 1999.[1]

A foreclosure sale was set to auction the property to the highest bidder for March 25, 2003 at 11:30 a.m. Around 9:30 a.m. on 3/25/03, King received a conveyance in the property and filed for bankruptcy protection under a Chapter 13 reorganization plan at 11:23 a.m. in the U.S. Bankruptcy Court for the District of Columbia and the case was assigned No. 03-

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[1] In 2001 and 2002, States Resources appointed two of its counsels from the law firm of Leitess and Leitess and Friedberg as Substitute Trustees under the deed of trust and one of the Substitute Trustees represents the mortgagee in this case.

00574. Debtor immediately notified the Substitute Trustees by having a call placed to their Office of her interest in the property, her bankruptcy filing and her case number.[2] Debtor also notified the DC Auctioneer's Office (Alex Cooper, Co.) of same. All of this took place prior to the 11:30 a.m. time set for the foreclosure. King notes here that she got a friend to call the Substitute Trustees' Office and the friend testified at trial that she spoke directly to Mr. Friedberg of the law firm and to his staff person informing them of the bankruptcy filing and the conveyance of an interest in the property. Despite having given prior notice to the Substitute Trustees and the Auctioneer's Office of the conveyance, the filing of the bankruptcy Petition and the case number, the Substitute Trustees directed that the foreclosure sale be carried out and said sale took place in violation of the provisions of the automatic stay imposed under 11 U.S.C. §362(a).

On April 2, 2003 (and unbeknownst to King), States Resources filed a Motion for Relief from the Automatic Stay and to Expedite a Hearing. The Bankruptcy Court on April 4, 2004, sent States Resources a deficiency Notice which indicated that

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This was the first time that King had ever filed a bankruptcy of any kind in any bankruptcy court. King was not represented by counsel and filed her Petition as a *pro se* litigant.

the creditor must provide notice to the debtor of her right to file an opposition to the Motion for Relief from the Automatic Stay within 11 days of the date of filing. In spite of this provision, the Court set a hearing on the matter for April 8, 2003 (only four days after the deficiency notice and within the time allotted to King to oppose the Motion). On April 8, 2003, the U. S. Bankruptcy Court entered an Order annulling the automatic stay under 11 U.S.C. §362(d) to permit the foreclosure to stand retroactively. King notes that States Resources indicated to the Bankruptcy Judge that they contacted King and she stated that she would not be attending.[3] Debtor notes here that this Order

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King was not notified of the hearing held on April 8, 2003 and she was never served with a copy of States Resources' Motion for Relief from the Automatic Stay and to Expedite the Hearing. Moreover, Debtor was never contacted by States Resources or anyone in the Substitute Trustees' Office regarding the filing of these Motions or of the existence of a hearing on the Motions on April 8, 2003. On or about April 9, 2003, Debtor called the Clerk's Office of the U.S. Bankruptcy Court to inquire about the status of her case because she had received no word concerning the date for her creditor's meeting nor the date for her confirmation hearing. King explained to the Clerk that she had been experiencing recent problems in having her mail forwarded from her old residence (a property that was embroiled in a legal suit over King's deceased father's Estate) to her post office box. In light of this difficulty, Debtor requested that her mail go directly to her post office box and on April 17, 2003, she filed a notice of change of address with

entered by the Court annulling the automatic stay is of no effect in that it entry violated Bankruptcy Rule 9013 and therefore the later proceedings and the subsequent entry of the Court's Order, after those proceedings outlined below should actually constitute the initial proceedings and Order to terminate the automatic stay.

On May 29, 2003, King filed an Emergency Motion for Reconsideration of the Order granting relief from the automatic stay. Following a hearing scheduled for June 19, 2003, the Bankruptcy Court entered a written Order denying the Motion for Reconsideration without an opinion. In her Motion for Reconsideration, Debtor stated that she received no notice of the previous hearing by mail or otherwise and at the hearing on 6/19/03, Debtor requested a continuance in order to obtain counsel. The Bankruptcy Court denied the request for a continuance and entered an oral decision from the bench.

Briefly the Bankruptcy Judge found that King's Petition had been filed in bad faith for the sole purpose of circumventing a foreclosure sale since Perkins was ineligible to file having filed four previous bankruptcies within 5 years and that Perkins' last bankruptcy filing was dismissed with prejudice and the 180 day penalty period had not run when the property was slated for the

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[1]the Clerk of the Bankruptcy Court.

subject foreclosure.[4] The Bankruptcy Court also made some

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[4] The record of Perkins' bankruptcy filings reveals that Perkins and his bus company, Capitol Tours filed four (4) bankruptcy petitions between 1997-2002 and the last petition was dismissed on January 29, 2003. The first relevant Petition was filed under Chapter 11 of the Bankruptcy Code and Debtor reached a stipulation approved by the Court conditioning the automatic stay from foreclosure upon compliance with the terms of the stipulation. That Petition was dismissed for 180 days on the consent of the parties. When States Resources directed its Trustee to conduct the next foreclosure sale, that sale was postponed when Perkins reached an agreement with States Resources to pay a certain sum of money pursuant to a forbearance agreement. Perkins then filed for relief under Chapter 11 and the Bankruptcy Court entered a written Order several months later that the 180 day prohibition period against re-filing in the previous bankruptcy ran from the date of entry of the written Order and not from the decision to dismiss from the bench. Perkins filed a bankruptcy Petition under Chapter 13 of the Bankruptcy Code in 2000, which was dismissed with prejudice. What was not emphasized in the Court's consideration of Perkins' filings was that not all of the dismissals or lifting the automatic stay were the result of defaults on the note in favor of States' Resources. In addition, Debtor presented extensive evidence regarding Perkins' legitimate attempts to satisfy his lien in favor of States Resources, including obtaining a loan to pay off the lien and paying large sums of money on several occasions to stop the foreclosure while negotiations to obtain the loan were going on. None of those sums were paid towards the principal and States Resources rushed to foreclosure despite Perkins' having been approved for a loan and before settlement on the loan took place.

references to certain deficiencies in King's bankruptcy Petition which will be outlined in subsequent paragraphs below.

The Substitute Trustees under the deed of Trust in favor of States Resources executed a quitclaim deed conveying the property to a third party on June 17, 2003. On May 6, 2003, King recorded among the land records, in the Office of the Recorder of Deeds, a Notice of Lis Pendens listing the property, the filing of the Bankruptcy Petition and the controversy regarding it. The lis pendens specifically included the language that "no transfer or conveyance of title to this property should go forth pending the action to be filed in the U. S. Bankruptcy Court and thereafter until the action is resolved by the Court and King has completed her Bankruptcy."

The Bankruptcy Court entered its written Order denying Debtor's Motion for Reconsideration on June 23, 2003 without an opinion. Debtor filed a notice of appeal from the decision to lift the automatic stay on June 20, 2003. King also recorded among the land records, on the same day, an addendum to the Lis Pendens captioned "Second Notice of Lis Pendens," indicating to all the public that States Resources and the would be third party purchaser had constructive (and actual) notice of the recordation of the original lis pendens recorded on May 6,

2003 and that the conveyance to the third party was invalid and void.

When the bankruptcy court orally denied King's Motion for Reconsideration, it stated from the bench as described earlier that this case was an "abusive filing." It is stated that "it's obvious that the conveyance was made to Ms. King, a friend of Mr. Perkins, in an attempt to circumvent the bar against Perkins obtaining a further automatic stay against foreclosure" and that not until the morning of the foreclosure sale did the Debtor file her bankruptcy case. King notes here that the Court did acknowledge that the Substitute Trustees were notified by Debtor of the filing and that the quitclaim deed executed by Perkins to King was a conveyance.

The Bankruptcy Court went on to state that it was additionally denying the Motion on the grounds that King failed to provide a reliable mailing address and that the conveyance of the property to a third party purchaser at the foreclosure sale resulted in intervening rights of the purchaser that frustrates bankruptcy for this type of shenanigans [there was no conveyance at foreclosure] to go on the very day of the ...foreclosure sale, and in the circumstances on this record, the creditor acted reasonably." The Bankruptcy Court did not defer to the fact that Debtor stated that she had filed a *lis pendens*.

Concurrent with the events surrounding the automatic stay on

May 6, 2003, the Bankruptcy Court entered an Order granting King's Motion to File her Schedules, Plan and Financial Statement out of time. The Court continued Debtor's creditors' meeting to May 19, 2003 and set confirmation hearings for June 20, 2003 and later for August 8, 2003. Prior to the creditors meeting, the Chapter 13 Trustee filed a Motion and an Amended Motion to Dismiss the Petition with Prejudice on Ineligibility and Bad Faith. King submits that the key grounds for the Trustee's position was Perkins' several bankruptcy filings. Debtor filed timely objections to both Motions. The Motions alleged generally in addition to fraud and bad faith in light of Perkins' previous bankruptcy filings, (1) failure to prove regular income; (2) failure to commence timely payments into the plan under 11 U.S.C. §1326; (3) failure to file complete and accurate schedules; and (4) she failed to disclose ownership in real property located at 4011 13th Street NE, (King's former residence). The Chapter 13 Trustee requested that Debtor's Petition be dismissed with prejudice to her re-filing for a period of 180 days, pursuant to 11 U.S.C. §§ 105 and 349.

King maintained in her Responses to the Trustee's Motions that the deficiencies outlined were more the result of Debtor's inexperience as a first time *pro se* filer than to any deliberate misrepresentations. Briefly, King argued that she submitted copies of her executed copies of her business contract with her

customers since she is a self-employed general maintenance contractor as proof of income and she indicated in her Motion for Leave to File her Schedules late that she was in the process of preparing her income taxes in time for presentation to the Trustee before June 20, 2003. Debtor complied and served the Trustee with copies of her income taxes covering the two year period before the filing of her Voluntary Petition. King further argued that Perkins' status as a repeat filer should not have been grounds to dismiss her Petition because she was entitled to file a bankruptcy in her own right to reorganize her individual debts along with protecting the subject property from foreclosure in order to increase her own business prospects. Debtor argued that she did not intentionally fail to disclose her ownership interest in the real property located at 4011 13th Street NE, WDC but she was unclear as to whether to claim any legitimate interest in the real estate since she received no proceeds from the sale and the property had been sold. King did list the litigation surrounding that particular real property that was going on in the DC Superior Court in her Bankruptcy Schedules.

Debtor indicated that she made payments into her Plan prior to her confirmation hearing and her failure to make the initial payment into the Plan before her creditors' meeting was due to her ignorance as a *pro se* litigant and the fact that she believed that she had 30 days to make the initial payment. King further

indicated that the wrong social security number typed in the petition was simply a typographical error and that she went back to the Clerk's Office and placed her initials over the corrected number. (King did present a picture ID with her correct social security number when she filed the Petition at her creditors' meeting).

The Court held the confirmation hearing on August 8, 2003 after the hearing held on June 20, 2004 was continued. Debtor was represented by counsel by this time[5] and at the conclusion of this hearing, the Bankruptcy Court dismissed King's Petition with prejudice from the bench and followed up with its written Order entered on August 13, 2003. The Court dismissed the case with prejudice despite Debtor having paid 100% into her Plan

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The Bankruptcy Court disallowed the creditor, (the Estate of Garland A. King) wherein King sought to have the judgment against her in favor of the Estate paid through her bankruptcy (the judgment was for $10,000.00) citing Rule 9006 of the Federal Rules of Bankruptcy Procedure. The Court took this posture although Debtor listed the Estate as a creditor and the claim was presented within 90 days of Debtor's creditor's meeting. However, the Court on the erroneous word of counsel for the Estate, noted that King owed a $60,000.00 debt to her surety company that she was never liable for when she was personal representative of the Estate. King later requested that her counsel formerly withdraw his representation after he erroneously and without any knowledge of the misrepresentation by the Estate's counsel indicated that King owed the debt.

and having satisfied the Trustee's concerns about her income. King filed a Motion for Reconsideration of the written Order of August 13, 2003 and on November 7, 2003, the Bankruptcy Court entered a written Memorandum Opinion and Order with findings of fact and conclusions of law upholding its decision to dismiss with prejudice pursuant to ll USC §§109(g) & 1307(c).

King noted an appeal timely from the Order of November 7, 2003 to dismiss her Petition with prejudice in addition to her appeal from the Order annulling the automatic stay to the U. S. District Court for the District of Columbia. The U. S. District Court affirmed the Orders of the Bankruptcy Court following consolidating the appeals in March, 2005. The District Court while affirming the decisions of the Bankruptcy Court, observed that King had raised "a legal point in her brief not squarely covered by the Bankruptcy Court's decision"- namely, that the automatic stay was immediately effective upon the filing of her petition, so that the foreclosure sale was void regardless of whether States Resources knew of the filing at the time of the sale. The District Court concluded that the foreclosure sale did not have to be rescheduled in that the Bankruptcy Court's ruling "vacating the automatic stay upon a finding of bad faith had the operative effect of annulling the stay for cause, llUSC 362(d)(1)."

King then noted an appeal timely to the U. S. Court of Appeals for the District of Columbia Circuit from the decision of

the U. S. District Court. The parties filed initial Briefs and a Joint Appendix in this Court between January and March, 2006. On August 29, 2006, the Court entered an Order directing the Clerk to enter a new briefing schedule, appointing an *amicus curiae* to represent King's issues and to calendar this case for presentation to a merits panel. Following the submission of Briefs and Reply Briefs by the parties, this Court on March 2, 2007, scheduled oral argument for April 16, 2007.

On March 26, 2007, the Court entered an Order cancelling the oral argument and indicated that it would rely instead on the existing record to render a decision. The United States Court of Appeals on April 4, 2007, entered a Judgment and Memorandum dismissing the appeal from the District Court's affirmance of the annulment of the automatic stay as moot in light of the sale to a good faith purchaser during the pendency of this appeal and affirming the Bankruptcy Court's finding of bad faith as grounds to dismiss the Petition with prejudice under the clear error standard.

REASONS FOR GRANTING THE PETITION

I. The Recording of a *Lis Pendens* among the Land Records, Pursuant to DC Code §42-1207 Prior to the Sale of Estate Property Belonging to a Debtor in a Bankruptcy Overcomes the Presumption that Such Sale to a Good Faith Purchaser During the Pendency of an Appeal Deprives the Appellate Court of its Ability to Fashion any Remedy to the Former Owner/Appellant.

The Court's position that in bankruptcy in the absence of a stay, the sale of estate property to a good faith purchaser cannot be overturned on appeal if estate property is sold during the pendency of the appeal which makes said appeal moot since, the court cannot fashion any remedy to address the asserted injury is inapplicable to the case at bar. The Court's reliance upon its recent unpublished decision, *Allen v. Wells Fargo Bank,* No. 03-7152, 2004 WL 2538492, at *1 (D.C. Cir. November 9, 2004) to render King's appeal moot is erroneous by operation of the doctrine of Lis Pendens established by the DC Council ratified by Congress and encoded as DC Code §42-1207 in 2001. King maintains that the recordation of the lis pendens in the Recorder of Deeds' Office during the pendency of this case including the appeal operated as a stay and as a bar to the conveyance of the property to the third party purchaser and that this Court can review this case on appeal and fashion a remedy to address Debtor's grievances. Such remedy could include reversing the Bankruptcy Court's Order to annul the stay and permitting an unlawful foreclosure to stand and providing the avenue for Debtor to maintain an action for contempt against the creditor for selling the property while the automatic stay and the notice of lis pendens was in effect.

The Division of this Court stated in the Memorandum section of its Judgment entered on April 04, 2007, that " between the

time the stay was annulled and this appeal, the property was sold to a good faith purchaser." The Memorandum stated in pertinent part:

> King failed to obtain a stay of the bankruptcy court's ruling pending appeal. In bankruptcy, "in the absence of stay, the sale of estate property to a good faith purchaser cannot be overturned on appeal. Thus, this court would be unable to fashion any remedy to address [King's] asserted injury even if it were to find that the district court's denial of the motion for a stay pending appeal was improper." *Allen v. Wells Fargo Bank, No.* 03-7152, 2004 WL 2538492, at *1 (DC Cir. Nov. 9, 2004)(citations omitted). Accordingly, "the appeal must be dismissed as moot."[6]

The files and records of this case reveal that while King did not seek a stay of the Bankruptcy Court's Order annulling the stay, she did cause a Notice of Lis Pendens to be recorded among the land records in the Office of the DC Recorder of Deeds(Document # **2003054551**) well before any title to the property was conveyed to the third party purchaser. King argues that the recordation of the Lis Pendens operated as constructive notice to the third party purchaser of the controversy to the extent that the rights of the third party could not extinguish or moot out the appeal. Moreover, the conveyance by the Substitute Trustees of a deed in the face of the Lis Pendens against such conveyance

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[6] The denial of the stay that is referred by in the Memorandum is apparently King's request for a stay of eviction, carried out by the third party purchaser while the appeal was pending.

pending the resolution of the lifting of the automatic stay was illegal and did not change the status quo of the case. In addition, such notice caused the purchaser to lose the good faith purchaser status.

Debtor argues that the recordation of the Notice of Lis Pendens actually operated as or should have operated as a stay of any sale or conveyance of the property until this appeal was decided and therefore, there was no need to seek a stay pending appeal to avoid the mootness effect. In fact, the conveyance after the Lis Pendens was in effect constituted the kinds of situations that the DC Code regarding the doctrine of lis pendens was designed to protect. That is a circumstance where a litigant's right to seek redress of grievances regarding his or her real property is extinguished while the action is pending because the property is sold. The Notice of Lis Pendens prevents the uncertainty of relying upon a court to use its discretionary power to decide whether or not to grant a stay to prevent the rendering an appeal moot.

The notice of pendency of an action pursuant to DC Code §42-1207 governing real property situated in the District of Columbia supercedes the concept that the affected litigant must seek a stay from the court where the proceeding is taking place to keep the controversy surrounding the real property alive. King submits that this is true even in controversies over property in a

bankruptcy estate, particularly property that is not sold by a bankruptcy trustee (even though it probably effects real property sold by such trustee).

In 2000, the DC Council sought to establish a code of law for the District of Columbia to strengthen and improve the common law of lis pendens by establishing the " Fairness in Real Estate Transactions Act described as Act 13-299", Sec. 556(a). Notice of Pendency of Action and later encoded in 2001 as DC Code §42-1207 et. seq. This section of the DC Code provides in pertinent part:

> (a) The pendency of an action or proceeding in either state or federal court in the District of Columbia, or in any other state, federal or territorial court, affecting the title to or asserting a mortgage, lien, security interest, or other interest in real property situated in the District of Columbia does not constitute notice to, and shall not affect a party not a party thereto, unless a notice of the pendency of the action or proceeding is filed for recordation, as required by subsection (b) of this section.
>
> (b) The notice referred to in subsection (a) of this section shall be in writing, signed by the plaintiff, defendant, or other party to the action or proceeding, or by a counsel of record for such party, desiring to have the notice filed for recordation, and notarized, stating the: (1) Name of the court in which the action or proceeding has been filed; (2) Title of the action or proceeding; (3) Docket number; (4) Date of filing; (5) Object of the filing; (6) Amount of the claim asserted or the nature of any other relief sought; (7) Name of the person whose estate is intended to be affected thereby; and (8) Description of the real property sought to

be affected.

(c) The Recorder of Deeds shall admit for filing and recordation all notices that meet the requirements of subsection (b) of this section. Such notices shall have effect from the time of the filing for recordation.

(d) If judgment is rendered in the action or proceeding against the party who filed the notice of the pendency the judgment shall order the cancellation and release of the notice at the expense of the filing party as part of the costs of the action or proceeding. When appropriate, the court may also impose sanctions for the filing. In a case in which an appeal from such judgment would lie the prevailing party shall not record the judgment until after the expiration of the latest of the following: (1) The time in which an appeal may be applied; (2) The time in which an appeal, which has been applied for, has been refused; or (3) Final judgment has been entered by the appellate court from an appeal which has been granted....

The plain language of this section of the Code is consistent with the argument that the filing of a lis pendens during the pendency of a proceeding in any court including federal courts such as the Bankruptcy Court, the District Court and the U.S. Court of Appeals for the District of Columbia Circuit before property that is the subject of the controversy is transferred puts any "would-be" purchaser on notice that such transfer is void and illegal.[7]

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The record clearly reflects that not only did Debtor inform the Bankruptcy Court of the filing of her notice of lis pendens, she

Moreover, it is plain from the language of this section of the DC Code that a notice of lis pendens operates as a stay or bar to sale or transfer of the property and that any "would-be" purchaser loses any rights to affect the proceeding(s) regarding the property. The mootness doctrine, therefore, did not apply here in spite of King not seeking a stay, of the annulment Order from the Court. Debtor invoked the protections of §42-1207. King contends that the Federal Court in this instance was required to submit to the DC law, since the action took place in the District and the property is located in the District. ***Id* at 42-1207(a)**. Debtor maintains that since she filed the Notice of Lis Pendens among the DC land records, she was not required to seek a second stay from the Bankruptcy Court or from the District Court against the transfer of the property even though she sought a stay of eviction from the Court to prevent the third party purchaser from illegally evicting her. (Debtor maintains here that under the circumstances, this Court has jurisdiction to even review the sufficiency of this Order denying the stay of eviction).

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personally served the Substitute Trustees and the "would-be" purchaser, with a copy of the notice of lis pendens before any conveyance of the property. In addition, Debtor filed an addendum to the first notice of lis pendens indicating this fact, and informing the public that the purported sale was void and illegal. Debtor maintains that the lis pendens operates as a sufficient lien against the title and title in the hands of the third party is not clear.

In this instance, this Court's unpublished decision namely, *Allen v. Wells Fargo,* supra cited as applicable authority for the Court's inability to review King's issues on appeal is not controlling. The recordation of the lis pendens before the sale of the property to a third party invoked the protections against having Debtor's issues regarding the annulment of the automatic stay quashed as moot. This is particularly true since a DC statute that applies to this Court continuance of an action obviously carries more weight than an unpublished opinion giving the Court discretionary authority to stay the effect of an Order. This Court's use of *Allen v. Wells Fargo,* supra to moot out Debtor's appeal, (especially when the issues raised on appeal resulted in the scheduling of oral argument in this case) when King clearly invoked the protections of the doctrine of lis pendens under §42-1207 of the DC Code is clearly erroneous. The current decision if allowed to stand has the effect of permitting a creditor to totally defy the Bankruptcy law. First, it held a foreclosure sale in violation of the automatic stay, second it sold the property in the face of a recorded lis pendens and the third-party purchased the property knowing that the lis pendens was in effect and before the controversy was finally decided, and third the creditor gets to have its wrongdoing justified by this Court moot out Debtor's appeal on the basis of an unpublished decision that has no weight or force against the protections of the lis pendens under §42-1207. This is not the purpose of the Bankruptcy laws. In fact not only does it undermine the purpose and intent of §42-1207 of the DC Code, it constitutes is the permissible perpetration of a fraud by

the creditor at the expense of the Debtor. Rehearing or in the alternative rehearing en banc should be granted on this issue.

II. The U.S. Bankruptcy Court Violated Petitioner's Due Process Rights by Dismissing her Bankruptcy Petition under the Standard of Bad Faith Filing Based Largely upon the Previous Filings of the Co-owner of Petitioner's Real Property.

The Bankruptcy Court's decision to dismiss King's Petition with prejudice was also clearly erroneous because it was based upon its reasons for the annulment of the stay - that Debtor filed her petition in bad faith. Because this Court can fashion a remedy to address King's grievances with respect to the annulment of the stay, it can also address the dismissal of her Petition on the same grounds. In addition, the procedural missteps stressed by the Bankruptcy Court as grounds for dismissal were less serious than the courts' opinions reflect given King's status as a *pro se* Debtor and there is little evidence that such missteps should or would result in the harsh sanction of dismissal let alone dismissal with prejudice.

Debtor's argument that the appeal is not moot by operation of the doctrine of lis pendens under §42-1207 et. seq. provides the basis for why the United States Court of Appeals erred in affirming the finding of bad faith by the Bankruptcy Court and the District Court. The dismissal of Debtor's Petition with prejudice by the Bankruptcy Court and the U. S. District's Court's affirmance of the decision was based largely upon the same finding of bad faith that the Bankruptcy Court reasoned to annul the automatic stay. (Mot. for Recon.)(Memorandum Opinion, U.S. Dist. Ct). Thus, the

decision to dismiss Debtor's appeal from the Order annulling the automatic stay as moot affects this Court's *de novo* review of the Bankruptcy Court's legal conclusions in dismissing the appeal. Debtor would note that the appeal was dismissed with prejudice a situation that was not even found in *Allen v. Wells Fargo,* supra, which supports the argument that the decision to dismiss with prejudice was based largely upon the reasoning employed by the Bankruptcy court to annul the stay. (Perkins' filings).

In the absence of any review of the findings by the Bankruptcy Court to annul the stay since this Court declined to address these issues under the mootness doctrine, King asserts that the affirmance of the findings of bad faith based only on the procedural errors committed by this Debtor in her *pro se* Petition do not support a dismissal of the Petition and certainly not with prejudice. This decision under these circumstances makes no legal sense. It is not supported by this Court's case law that "because the dismissal of a bankruptcy petition is a harsh sanction, the bankruptcy court should be reluctant to dismiss a petition under 11 USC §1307(c) absent a showing of good cause." In re *Love,* 957 F.2d 1350 (7th Cir., 1992); *Barclays-American/Business Credit, Inc. v. Radio WBHP, Inc.,* 871 F. 2d 1023, 1029 (11th Cir. 1989)(The lifting of the automatic stay does not necessarily warrant dismissal).

The procedural errors on the part of this Debtor as outlined in Appellant's and Amicus' Brief and Amicus' Reply Brief were minimal and the result of typographical errors and/or Debtor's not

being familiar with the rules, given her *pro se* status. [8] The important issue here is that she had corrected all of these deficiencies in her Petition by the date of her confirmation hearing, including paying 100% into her Plan. The procedural errors when taken aside from the reasoning for annulling the stay, clearly did not warrant the harsh measure of dismissal of the Petition let alone dismissal with prejudice. *Haines v. Kerner,* 404 U.S. 519, 520 (1972)(courts hold pleadings of *pro se* litigants, "to less stringent standards").

King argued to the Court that she was unaware of Perkins' multiple Bankruptcy filings and that the reliance upon Perkins' issues to dismiss her Petition with prejudice unfairly prejudiced her case and actually violated her constitutional rights to re-organize her debts and get a fresh start. In *Marrama v. Citizens Bank,* supra, the U. S. Supreme Court ruled that a Bankruptcy Court can dismiss a petition under 11 U.S.C. §1307 (c) for bad faith; however, the Supreme Court stressed that dismissal for bad faith must be limited to extraordinary cases involving "atypical" debtors. Debtor maintains here that she was hardly an "atypical" litigant; she had never filed before and her procedural blunders which were

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[8] In some instances the errors stressed by the Bankruptcy Court did not exist. For example, the Court stated that King had not listed all of her creditors. She actually listed all of her creditors (in the Skeleton Petition in long hand) and added the other creditor as an amendment.

corrected did not rise to the level of "atypical" neither were the circumstances extraordinary so as to warrant a dismissal without prejudice.

King urges this Court to rehear or rehear en banc its decision to affirm the decisions of the Bankruptcy Court and the U. S. District Court under the clear error standard as to the dismissal of her Petition with prejudice in that the dismissal of the appeal from the Order annulling the stay as moot so clearly affects the affirmance of the dismissal for bad faith. If the Court is of the opinion that it cannot fashion a remedy or address King's grievances as to the annulling of the stay because it considers that appeal moot, then it should not have affirmed a decision dismissing a Petition for bad faith that is based upon the same grounds for annulling the stay (Perkins' multiple bankruptcy filings). This poses an unfair prejudice to Debtor since she has demonstrated no existence of a good faith purchaser, and since she invoked the doctrine of lis pendens under the DC Code (§42-1207) during this controversy before the property was conveyed.

King argues as she has throughout this Petition that this Court has the authority to address her issues on appeal from the annulment of the stay and it should do so. The Judgment and Memorandum entered by this Court on April 4, 2007 should be vacated and the matter reheard or reheard en banc and this case should be re-calendared to review Debtor's appeals from the

dismissing a Petition for bad faith that is based upon the same grounds for annulling the stay (Perkins' multiple bankruptcy filings). This poses an unfair prejudice to Debtor since she has demonstrated no existence of a good faith purchaser, and since she invoked the doctrine of lis pendens under the DC Code (§42-1207) during this controversy before the property was conveyed.

King argues as she has throughout this Petition that this Court has the authority to address her issues on appeal from the annulment of the stay and it should do so. The Judgment and Memorandum entered by this Court on April 4, 2007 should be vacated and the matter reheard or reheard en banc and this case should be re-calendared to review Debtor's appeals from the annulment of the automatic stay and the dismissal of her Bankruptcy Petition with prejudice.

CONCLUSION

Based upon the foregoing, King prays that this Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

/s/ Jacqueline King, pro se,
PO Box 91608 Washington
Washington, DC 20090-1609
(202) 203-0047

Dated: May 9, 2008